



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ENVIRONMENT AND LAND CASE NO. 62 OF 2017**

**FORMERLY MERU ENVIRONMENT AND LAND CASE NO. 104 OF 2015**

**AGNES MUTHONI NYAGA.....1<sup>ST</sup> PLAINTIFF**

**EVRIKER KARIMI NKARI.....2<sup>ND</sup> PLAINTIFF**

**HELLEN NKATHA NKARI.....3<sup>RD</sup> PLAINTIFF**

**CHRISTINE KANJIRU NKARI.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**ALICE C. ALEXANDER.....1<sup>ST</sup> DEFENDANT**

**ALBERT MUGENDI NKARI.....2<sup>ND</sup> DEFENDANT**

**FRANKLINE KIRIMI NKARI.....3<sup>RD</sup> DEFENDANT**

**PETER MURIMI.....4<sup>TH</sup> DEFENDANT**

**JOLINE MUTHONI GACHUNKI.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. This application is dated 31<sup>st</sup> March, 2017 and seeks orders:

1. That on the first instance this application be certified as urgent and the same be heard exparte.
2. That this honourable court be pleased to set aside and vary the dismissal order of the plaintiffs suit dated 23.3.2017 (annexed hereto) and any subsequent order thereof upon such term (sic) as are just for the interest of justice.
3. That this honourable court be pleased to set aside the said dismissal of the plaintiffs case dated 23.3.2017 and order for reinstatement of the plaintiff's case for hearing on its own merits.
4. That this honourable court be pleased to make such further orders as may be necessary for the interest of justice.
5. That the costs of this application be in the cause.

2. The application is buttressed by the affidavit of AGNES MUTHONI NYAGA sworn on 31<sup>st</sup> March, 2017 which states:

“I AGNES MUTHONI NYAGA, OF P. O. BOX 2626-60200, MERU in the Republic of Kenya do hereby make oath and state as follows:

1. THAT I am the 1<sup>st</sup> plaintiff herein hence I am competent to make and swear this affidavit and have authority from my co-plaintiffs to swear this affidavit.
2. THAT we have duly authorized our Advocate Mr. Julius Kiogora Ariithi Advocate to make and swear the annexed affidavit.
3. THAT we filed this case against the defendants who are seeking to sell our family land to 3<sup>rd</sup> parties.
4. THAT we have fully complied with the Civil Procedure Rules and the case is ready for hearing.
5. THAT I have understood from our Advocate that this case was coming up for hearing on 23.3.2017 and due to mistake on his part he did not inform us of the hearing date for the main case.
6. THAT due to our Advocate's said mistake, we did not attend the court on 23.3.2017 and our case was dismissed for non-attendance.
7. THAT we are eager to prosecute this case and pray this Honourable Court to exercise its discretion and set aside the dismissal order dated 23.3.2017.
8. THAT this being a sensitive land case, I urge this Honourable court to set aside and vary the dismissal order dated 23.3.2017 and allow us to proceed with our case as no prejudice will be occasioned to the defendants as also explained by annexed affidavit by our advocate.
9. THAT I urge this Honourable court to allow our application annexed for the wider interest of justice.
10. THAT the facts I have deponed to herein above is (sic) true to the best of my knowledge, information and belief.

3. When the application was slated for hearing, Mr. Kiogora asked the court to allow the application as it was not opposed. Mr. Kijaru for the defendants told the court to give him time to seek instructions from his clients. He, however, did not explicitly oppose the application.

4. This suit was dismissed on 23<sup>rd</sup> July, 2017 in terms of order 12, CPR, because the plaintiffs were not in court during the day hearing of the suit was to take place. The plaintiffs are lucky because the defendants had no counter-claim. If they had a counter claim and proved it, the court's hands would be fettered and it would not countenance reinstatement of the suit. The plaintiffs would then be required to move to a higher court for the remedies they would be seeking.

5. This suit pits the plaintiffs against the 1<sup>st</sup> defendant, their mother, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their brothers and the 4<sup>th</sup> and 5<sup>th</sup> defendants who are people intending to buy part of the suit land from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

6. The plaintiffs aver that the suit land is family land and that it requires to be protected.

7. I have carefully considered all the issues raised in this application. The suit involves family members and the suit land is claimed to be ancestral land. The defendants do not have a counter-claim. At the dismissal stage, they did not prove anything.

8. I find that this suit merits reinstatement. The dismissal order issued on 23<sup>rd</sup> day of March, 2017 is vacated.

9. In the circumstances, this application is allowed in terms of prayer 3.

10. The consequence is that the suit is reinstated.

11. Costs shall be in the cause.

12. It is so ordered.

Delivered in open court at Chuka this **5<sup>th</sup> day of April, 2017** in the presence of:

CA: Ndegwa

Kiogora Arithi for the plaintiffs

Kijaru for the defendants

**P. M. NJOROGE,**

**JUDGE.**